

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEROY A. ANDREOZZI

Plaintiff,

No. CIV S-02-0796 GEB CMK P

vs.

GRAY DAVIS, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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Plaintiff, who is a state prisoner proceeding without counsel and in forma pauperis, brings this action pursuant to 42 U.S.C. § 1983. He alleges that the California Department of Corrections' grooming policy unduly burdens his religious beliefs. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302(b)(21).

On February 9, 2006, the court filed findings and recommendations recommending that plaintiff's motions for injunctive relief be denied as moot. Plaintiff filed objections to the findings and recommendations on February 17, 2006, directing the court's attention to his February 8, 2006 reply to defendants' opposition to his motion for a preliminary injunction.

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1 “[S]trict time limits...ought not to be insisted upon where restraints resulting from
 2 a pro se prisoner’s incarceration prevent timely compliance with court deadlines.” Eldridge v.
 3 Block, 832 F.2nd 1132, 1136 (9th Cir. 1987). Accordingly, the court vacates its February 9,
 4 2006 (doc. 110) findings and recommendations and issues the following findings and
 5 recommendations, which take plaintiff’s February 8, 2006 reply into consideration.

6 **I. Background to Plaintiff’s Claims**

7 Plaintiff, a Te-Moak of the Western Shoshone Tribe, brings this suit challenging
 8 the Department of Corrections’ (CDC) enforcement of the 1997 grooming standards, which
 9 require inmates to maintain short hair. Plaintiff is devoted to his Tribe’s traditional religious
 10 practices and is a practicing Shonshone Ghost Dancer. One tenant of plaintiff’s religious faith
 11 teaches that hair may only be cut upon specific conditions or during religious rituals. Plaintiff
 12 contends that being made to cut his hair burdens his religious beliefs. The sole claim in this
 13 action is plaintiff’s injunctive relief claim under the Religious Land Use and Institutionalized
 14 Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc-2000cc-5 (2002).¹

15 A reading of plaintiff’s amended complaint suggests that when plaintiff is
 16 disciplined for a violation of the grooming regulations, he is placed on “C status.” (Am. Compl.
 17 at 11, 16.) This status prevents plaintiff from, among other things, making telephone calls home.
 18 (Id.) It appears that plaintiff’s C status classification is a limited duration punishment, and not an
 19 ongoing permanent classification. On September 7, 2005, plaintiff filed a motion for a
 20 temporary restraining order or preliminary injunction, which he indicated was supplemental to
 21 his August 17, 2005 filing. (Doc. 102.) In his motion, plaintiff alleged that defendants had
 22 violated his constitutional rights by denying plaintiff a religious exemption to the CDC’s

23
 24 ¹On February 11, 2005, this court entered findings and recommendations on defendants’
 25 motion for summary judgment recommending that plaintiff’s equal protection and Fourth
 26 Amendment claims be dismissed without prejudice, that plaintiff’s First Amendment claim be
 dismissed and that this action proceed on plaintiff’s Religious Land Use and Institutional
 Persons Act of 2000 (RLUIPA) claim. The District Court adopted the findings and
 recommendations in full on March 9, 2005.

1 grooming policy. For relief, plaintiff sought “all relief filed August 17, 2005,” which
2 presumably was an order directing the CDC to stop disciplining plaintiff for grooming
3 violations.

4 On January 12, 2006, the court notified defendants that a response to plaintiff’s
5 motions for injunctive relief was due within twenty-one days. On January 27, 2006, defendants
6 filed their opposition to plaintiff’s motion for injunctive relief. Plaintiff’s response was due
7 seven days after defendants’ response. Plaintiff filed a response on February 8, 2006. In his
8 reply to defendants’ opposition to his motion for injunctive relief, plaintiff states that “the
9 classification committee will ‘not’ take the plaintiff off of C-Status ‘now’ unless this court orders
10 [a] preliminary injunction and orders the removal of all grooming standards.” (Pl.’s February 8,
11 2006 Reply at 3:4-9.)

12 **II. Standard of Review**

13 The legal principles applicable to requests for injunctive relief, such as a
14 temporary restraining order or preliminary injunction, are well established. To prevail, the
15 moving party must show either a likelihood of success on the merits and the possibility of
16 irreparable injury, or that serious questions are raised and the balance of hardships tips sharply in
17 the movant’s favor. See Coalition for Economic Equity v. Wilson, 122 F.3d 692, 700 (9th Cir.
18 1997); Oakland Tribune, Inc. v. Chronicle Publ’g Co., 762 F.2d 1374, 1376 (9th Cir. 1985). The
19 two formulations represent two points on a sliding scale with the focal point being the degree of
20 irreparable injury shown. See Oakland Tribune, 762 F.2d at 1376. Under any formulation of the
21 test, however, the moving party must demonstrate that there exists a significant threat of
22 irreparable injury. See id. In the absence of a significant showing of possible irreparable harm,
23 the court need not reach the issue of likelihood of success on the merits. See id. A claim for
24 injunctive relief is moot if “it is absolutely clear that the allegedly wrongful behavior could not
25 reasonably be expected to occur.” Friends of the Earth, Inc. v. Laidlaw Environmental Services,
26 528 U.S. 167, 190 (2000).

1 III. Discussion

2 Defendants oppose plaintiff's request for injunctive relief on the grounds that
3 plaintiff's claim for injunctive relief is moot because of changes to the California Code of
4 Regulations concerning inmate hair length. Plaintiff's complaint is based on allegations that
5 defendants are burdening his religious beliefs by enforcing grooming standards requiring all
6 inmates to have short hair. Plaintiff's motion for injunctive relief seeks to prevent prison
7 officials from disciplining him for violating these grooming standards. Effective January 17,
8 2006, the Office of Administrative Law filed emergency changes to the grooming standards with
9 the Secretary of State. See Cal. Code Regs tit. 15, § 3000-3210. The modified regulations permit
10 inmates to wear their hair any length and to wear beards as specified. See id.; Defs.' Mot. to
11 Dismiss and Opp'n to Pl.'s Mot for Prelim. Inj., Ex. A. If hair is long, it must be worn in a neat,
12 plain style, such as braids or cornrows. See Cal. Code Regs tit. 15, §§ 3062(e) and 3062(g).

13 As emergency provision, the new regulations are subject to a 160 day waiting
14 period of public comment before they are considered final. See Defs.' Mot. to Dismiss and
15 Opp'n to Pl.'s Mot for Prelim. Inj., Ex. A. However, the regulations, as now constituted by law
16 and the California Code of Regulations, are those being applied at state prisons. Id. Former
17 restrictions with respect to hair and beards are no longer in effect. Id.

18 The court notes that in his February 8, 2006 reply, plaintiff states that he will not
19 be taken off C-Status unless this court orders injunctive relief removing the grooming standards.
20 However, under the modified grooming regulations, which are in effect at all state prisons, it is
21 clear that plaintiff's cannot be disciplined for maintaining long hair in accordance with his
22 religious beliefs. The court finds that the injury alleged in plaintiff's motions for injunctive
23 relief cannot reasonably be expected to occur, and plaintiff's claim for injunctive relief is moot.
24 See Friends of the Earth, Inc., 528 U.S. at 190.

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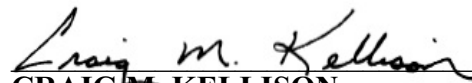
1 **IV. Conclusion**

2 IT IS ORDERED that the findings and recommendations filed February 9, 2006
3 **(doc. 110)** are vacated.

4 IT IS RECOMMENDED that plaintiff's motions for injunctive relief (doc. 101
5 and 102) be denied as moot.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
8 days after being served with these findings and recommendations, plaintiff may file written
9 objections with the court. The document should be captioned "Objections to Magistrate Judge's
10 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
11 specified time may waive the right to appeal the District Court's order. See Martinez v. Ylst, 951
12 F.2d 1153 (9th Cir. 1991).

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14 DATED: February 28, 2006.

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE
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